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No. 2471

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United States  
**Circuit Court of Appeals**  
For the Ninth Circuit

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OREGON-WASHINGTON RAILROAD & NAVI-  
GATION COMPANY, a Corporation,

*Plaintiff in Error,*

vs.

THE UNITED STATES OF AMERICA,

*Defendant in Error.*

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**Transcript of Record**

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Upon Writ of Error to the United States District Court  
for the Eastern District of Washington,  
Northern Division.

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**Filed**

SEP 1 - 1914

**F. D. Monckton,**  
Clerk.



No. \_\_\_\_\_

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## **Names and Addresses of Attorneys of Record**

ARTHUR C. SPENCER, Wells Fargo Building, Portland, Oregon, and

HAMBLEN & GILBERT, Paulsen Building, Spokane, Washington,

*Attorneys for Plaintiff in Error.*

FRANCIS A. GARRECHT, U. S. Attorney, Federal Building, Spokane, Washington, and

OTIS B. KENT, Special Assistant United States Attorney, Washington, D. C.,

*Attorneys for Defendant in Error.*

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*In the District Court of the United States, Eastern District of Washington, Northern Division.*

No. 1752.

UNITED STATES OF AMERICA,

*Plaintiff,*

*vs.*

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a Corporation,

*Defendant.*

## **Complaint**

Now comes the United States of America, by Oscar Cain, United States Attorney for the Eastern District of Washington, and brings this action on behalf of the United States against the Oregon-Washington Railroad & Navigation Company, a corporation organized and doing business under the laws of the State of Oregon, and having an office and place of business at Colfax, in the State of

Washington; this action being brought upon suggestion of the Attorney General of the United States at the request of the Interstate Commerce Commission, and upon information furnished by said Commission.

FOR A FIRST CAUSE OF ACTION, plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of Washington, and that the railroad of said defendant runs through the judicial district established by law as the eastern district of Washington.

Plaintiff further alleges that in violation of a certain order of the Interstate Commerce Commission issued on June 28, 1911, and made in pursuance of the provisions and requirements of Section 20 of the Act of Congress known as "An Act to Regulate Commerce," approved February 4, 1887 (24 Statutes at Large, 379), as amended by an Act approved June 29, 1906 (34 Statutes at Large, 584), as amended by an Act approved February 25, 1909 (35 Statutes at Large, 648), and as amended by an Act approved June 18, 1910 (36 Statutes at Large, 556), which order of said Commission is in the words and figures following, to-wit:

"IT IS ORDERED, That all carriers subject to the provisions of the Act entitled "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, report within 30 days after the end of each month, under oath, all instances where employees subject to said Act have



been on duty for a longer period than that provided in said Act,"

defendant, having theretofore failed to make and file with said Commission in any form whatsoever a report of all the instances wherein its employees subject to said "Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, were on duty during the month of March, 1913, for a longer period than that provided in said Act, did, on the 1st day of May, 1913, continue to be in default with respect thereto, and did fail to make and file with said Commission any report of the following instances in which employees of said railroad within the scope of said Act, were required or permitted to be and remain on duty as such employees for said railroad in certain twenty-four hour periods during said month of March, 1913, for a longer period of service than that provided in said Act, to-wit:

That wherein its certain operator and employee, B. G. Bishop, during the 24 hour period beginning at the hour of 7:30 A. M., on March 27, 1913, at its office and station at Colfax, in the State of Washington, was permitted and required to be and remain on duty for a longer period than thirteen hours, in said twenty-four hour period, to-wit: from the said hour of 7:30 A. M., on said date, to the hour of 8:45 P. M., on said date, and from the hour of 9:30 P. M., on said date to the hour of 11:15 P. M., on said date: said office and station then being one

operated only during the day time, and said employee while so required and permitted to be and remain on duty as aforesaid, by the use of the telegraph or telephone, having dispatched, reported, transmitted, received and delivered orders affecting the movement of trains engaged in interstate commerce.

Plaintiff further alleges that by reason of said violation of said order of the Interstate Commerce Commission, defendant is liable to the plaintiff in the sum of one hundred dollars.

"Said complaint contained 29 additional causes of action of the same tenor and effect, and in precisely the same words and figures as the first cause of action; except that the dates wherein defendant was alleged to have continued in default with respect to said reports were alleged to be respectively from the 2nd day of May, 1913, to the 17th day of May, 1913, both dates inclusive and intervening Sundays excepted, and from the first day of July, 1913, to the 18th day of July, 1913, both dates inclusive and Fourth of July and intervening Sundays excepted.

WHEREFORE, plaintiff prays judgment against defendant in the sum of \$3000.00 and its costs herein expended."

(Signed) OSCAR CAIN,  
United States Attorney.

Endorsements: Complaint.

Filed in the U. S. District Court for the Eastern District of Washington, August 4, 1913.

W. H. HARE, Clerk,  
By Frank C. Nash, Deputy.

*In the District Court of the United States, Eastern  
District of Washington, Northern Division.*

No. 1752.

UNITED STATES OF AMERICA,

*Plaintiff,*

*vs.*

OREGON-WASHINGTON RAILROAD & NAVI-  
GATION COMPANY, a Corporation,

*Defendant.*

**Answer**

Comes now the above named defendant, Oregon-Washington Railroad & Navigation Company, a corporation, and makes answer to the complaint of the plaintiff herein as follows:

I.

It denies each and every allegation contained in each of the thirty causes of action stated therein, except that it admits that during the time mentioned in each of said causes of action it was a common carrier engaged in Interstate Commerce by railroad in the state of Washington, and that its railroad runs through the Judicial District of the Eastern District of Washington; and except as to each of said causes of action the defendant admits that it did not, for the times mentioned in said causes of action nor prior thereto, report to the Interstate Commerce Commission the instances designated in said several causes of action as first to thirtieth inclusive in which the employee mentioned in said several causes of action was permitted to remain on duty for said

defendant railroad company in the 24-hour period mentioned in said several causes of action for a longer period than thirteen hours.

WHEREFORE defendant prays that the plaintiff's complaint be dismissed, and that it have and recover its costs and disbursements herein.

(Signed) A. C. SPENCER,

(Signed) HAMBLÉN & GILBERT,

Attorneys for Defendant.

STATE OF WASHINGTON,

County of Spokane,—ss.

W. S. GILBERT, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the above named defendant and makes this verification for and on its behalf for the reason that none of the officers of said defendant corporation are present within the county of Spokane capable of making this verification. That he has read the foregoing answer, knows the contents thereof, and the same is true as he verily believes.

(Signed) W. S. GILBERT.

Subscribed and sworn to before me this 4th day of September, 1913.

(Signed) L. R. HAMBLÉN,

Notary Public in and for the State of Washington, Residing at Spokane, Washington.

Endorsements: Copy of within answer received this 5th day of September, 1913.

(Signed) OSCAR CAIN,

United States Attorney.



Answer.

Filed in the U. S. District Court for the Eastern District of Washington, September 5, 1913.

W. H. HARE, Clerk,  
By Frank C. Nash, Deputy.

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*In the District Court of the United States, Eastern  
District of Washington, Northern Division.*

No. 1752.

UNITED STATES OF AMERICA,

*Plaintiff,*

*vs.*

OREGON-WASHINGTON RAILROAD & NAVI-  
GATION COMPANY, a Corporation,

*Defendant.*

### **Stipulation**

It is hereby STIPULATED by and between the parties to the above numbered and entitled cause that the defendant, Oregon-Washington Railroad & Navigation Company, is, and was during all the times specified in the declaration, a common carrier by railroad incorporated, organized, existing and doing business under the laws of the State of Oregon, and that it is, and was during all of said time, engaged in interstate commerce.

That on March 27, 1913, a certain telegraph operator and employee in the service of the said defendant, to-wit: B. G. Bishop, went on duty at Colfax, in the state of Washington, at 7:30 a. m., and remained on duty as such operator until 11:15 p. m., on said date;



That on May 23, 1913, the said B. G. Bishop went on duty as such operator at Colfax, in the said state of Washington, at 6:30 a. m., and remained on duty as such operator until 8:05 p. m., on said date;

That on both of said dates, between the hours specified, the said operator, B. G. Bishop, was engaged in part in the handling of orders pertaining to or affecting the movement of trains engaged in interstate commerce;

That on September 2, 1913, and not before said date, the said defendant reported to the Interstate Commerce Commission, at its office in Washington, D. C., the two foregoing instances in which an operator and employee of the said defendant remained on duty as such operator for more than 13 hours in a 24-hour period in a place or office operated only during the day time;

That the declaration herein may be amended by interlineation with respect to counts Nos. 16 to 30, inclusive, so as to show the service of the said operator, B. G. Bishop, as having occurred on May 23, 1913, instead of May 25, 1913, as stated in said declaration.

(Signed) FRANCIS A. GARRECHT,  
United States Attorney.

(Signed) OTIS B. KENT,  
Special Assistant U. S. Attorney.  
Attorneys for Plaintiff.

(Signed) A. C. SPENCER and  
HAMBLEN & GILBERT,  
Attorneys for Defendant.

Endorsements: Stipulation.

Filed in the U. S. District Court for the Eastern  
District of Washington, April 20, 1914.

W. H. HARE, Clerk,  
By Frank C. Nash, Deputy.

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*In the District Court of the United States, Eastern  
District of Washington, Northern Division.*

No. 1752.

UNITED STATES OF AMERICA,

*Plaintiff,*

*vs.*

OREGON-WASHINGTON RAILROAD & NAVI-  
GATION COMPANY, a Corporation,

*Defendant.*

**Stipulation Waiving Jury**

It is hereby stipulated and agreed between the  
above named parties that the above-entitled cause  
may be submitted to the court, and the trial of said  
cause by jury is hereby expressly waived.

(Signed) A. C. SPENCER and

HAMBLEN & GILBERT,

Attorneys for Defendant.

(Signed) FRANCIS A. GARRECHT and

OTIS B. KENT,

Attorneys for Plaintiff.

Endorsements: Stipulation Waiving Jury.

Filed in the U. S. District Court for the Eastern  
District of Washington, April 20, 1914.

W. H. HARE, Clerk,  
By Frank C. Nash, Deputy.

*In the District Court of the United States, Eastern  
District of Washington, Northern Division.*

No. 1752.

UNITED STATES OF AMERICA,

*Plaintiff,*

*vs.*

OREGON-WASHINGTON RAILROAD & NAVI-  
GATION COMPANY, a corporation,

*Defendant.*

### **Opinion**

Francis A. Garrecht, U. S. Atty., and Otis B. Kent,  
Special Asst. to U. S. Atty., for plaintiff.

Hamblen & Gilbert, for defendant.

RUDKIN, District Judge.

On the 28th day of June, 1911, the Interstate Commerce Commission promulgated the following order, pursuant to the authority conferred by Section 20 of the Act of February 4, 1887, (24 Stat., 279), commonly known as, "An Act to Regulate Commerce," as amended by the Act of June 29, 1906, (34 Stat., 584), as amended by the Act of February 25, 1909, (35 Stat., 648), and as amended by the Act of June 18, 1910, (36 Stat., 556):

"IN THE MATTER OF THE METHOD AND FORM OF MONTHLY REPORTS OF HOURS OF SERVICE OF EMPLOYEES ON RAILROADS SUBJECT TO THE ACT OF MARCH 4, 1907:

"The method and form of monthly reports of hours of service of employees upon railroads subject to the Act of March 4, 1907, having been considered by the Commission:

*"It is ordered,* that all carriers subject to the provisions of the act entitled, 'An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon,' approved March 4, 1907, report within thirty days of the end of each month, under oath, all instances where employees subject to said Act have been on duty for a longer period than that provided in said Act.

*"It is further ordered,* that the accompanying forms entitled, 'Interstate Commerce Commission, Hours of Service Report,' and the method embodied in the instructions therein set forth, be, and the same are hereby, adopted and prescribed; and all common carriers subject to said acts are hereby notified to use and follow the said prescribed forms and method in making monthly reports of hours of service of employees on duty for a longer period than that named in said act, commencing with and making the first report for the month of July, 1911.

*"And it is further ordered,* that copies of said forms, together with a copy of this order, be forthwith served upon all common carriers subject to this act."

On the 6th day of July, 1911, a copy of this order was served on Charles H. Bates, who had theretofore been designated as agent in the City of Washington, District of Columbia, for the defendant company upon whom service of all notices and processes might be made for and on behalf of the company, as provided in Section 6 of the Act of



June 18, 1910, to create a commerce court (36 Stat., 544). That section so far as deemed material reads as follows:

“It shall be the duty of every common carrier subject to the provisions of this act, within sixty days after the taking effect of this act, to designate in writing an agent in the city of Washington, District of Columbia, upon whom service of all notices and processes may be made for or on behalf of said common carrier in any proceeding or suit pending before the Interstate Commerce Commission or before said commerce court, and to file such designation in the office of the secretary of the Interstate Commerce Commission, which designation may from time to time be changed by a like writing similarly filed; and thereupon service of all notices and processes may be made upon such common carrier by leaving a copy thereof with such designated agent at his office or usual place of residence in the city of Washington, with like effect as if made personally upon such common carrier, and in default of such designation of such agent, service of any notice or other processes in any proceeding before said Interstate Commerce Commission or commerce court may be made by posting such notice or processes in the office of the Secretary of the Interstate Commerce Commission.”

No copy of the forms was served with the order, or otherwise formally served upon the defendant, so far as the record discloses. It does appear, however, that the defendant company received the forms prescribed by the Interstate Commerce Commission, and



referred to in the order from the Commission, and that report of excessive hours of service was made to the Commission on such forms covering the months for which a default is charged in this case.

The complaint now before the court contains thirty counts or causes of action in all. The first fifteen are based on a failure on the part of the defendant to make report on the first day of May, 1913, to the 17th day of May, 1913, both inclusive, Sundays excepted, of excessive hours of service by an employee named Bishop at Colfax, Washington. The remaining fifteen are based on a like failure to report from the first day of July, 1913, to the 18th day of July, 1913, inclusive, Sundays and the Fourth of July, excluded, of excessive hours of service by the same employee at the same place. It was admitted at the trial that the defendant was a common carrier by railroad engaged in interstate commerce and that the employee in question was on duty for a longer period than that allowed or permitted by law on the several dates named, and that no report was made to the Commission. The sole defense interposed was that a copy of the forms was not served upon the company together with the order as required by law and the order of the Commission. This defense is highly technical and in my opinion should not prevail. The notices and processes referred to in the act creating the Commerce Court are notices and processes of a jurisdictional nature in suits or proceedings inter partes pending before the Commission or the Commerce Court and the provision as to

service of such notices and processes has no application to general administrative orders affecting all carriers such as the one now under consideration. The requirement of service of this order rests entirely on the terms of the order itself and the service was intended for no other purpose than to impart notice to the carriers affected by it. The order as served referred to the forms to be used, the carrier actually received the forms and made reports on them for the very months during which the delinquencies complained of occurred, but the name and excessive hours of service of the employee in question were omitted therefrom by inadvertence or mistake. The company had therefore full notice of the order and its requirements and had full opportunity to comply with its provisions and the most formal notice could accomplish nothing beyond this. For these reasons the defendant in my opinion has incurred the penalty of one hundred dollars for failure to report on each of the several dates mentioned in the complaint and judgment will be entered accordingly.

Endorsements: Opinion.

Filed in the U. S. District Court for the Eastern District of Washington, April 28, 1914.

W. H. HARE, Clerk.

By Frank C. Nash, Deputy.

*In the District Court of the United States, Eastern  
District of Washington, Northern Division.*

No. 1752.

UNITED STATES OF AMERICA,

*Plaintiff,*

*vs.*

OREGON-WASHINGTON RAILROAD & NAVI-  
GATION COMPANY, a Corporation,

### **Judgment**

The above-entitled case coming on for trial on this 20th day of April, 1914, the plaintiff appearing by Francis A. Garrecht, United States Attorney for the Eastern District of Washington, and Otis B. Kent, Special Assistant United States Attorney, and the defendant appearing by Hamblen & Gilbert, its attorneys, and trial by jury having been waived by the parties hereto the case was submitted to the court upon oral argument, and the court having filed its opinion finding the defendant guilty as charged in each count of the complaint on file herein, it is, therefore,

ORDERED and ADJUDGED that the defendant, Oregon-Washington Railroad & Navigation Company, be, and it is hereby fined in the sum of Three Thousand Dollars (\$3000.00), being One Hundred Dollars (\$100.00) for each cause of action set forth in the complaint; and it is further,

ORDERED and ADJUDGED that the plaintiff, United States of America, do have and recover of and from the said defendant its costs and disburse-

ments herein incurred, taxed by the clerk in the sum of \$114.83.

Done in open Court this 27th day of May, 1914.

(Signed) FRANK H. RUDKIN, Judge.

Endorsements: Judgment.

Filed in the U. S. District Court for the Eastern District of Washington, May 27, 1914.

W. H. HARE, Clerk,  
By Frank C. Nash, Deputy.

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*In the District Court of the United States, Eastern  
District of Washington, Northern Division.*

No. 1752.

UNITED STATES OF AMERICA,

*Plaintiff,*

*vs.*

OREGON-WASHINGTON RAILROAD & NAVI-  
GATION COMPANY, a Corporation,

*Defendant.*

**Stipulation for Serving and Filing Proposed Bill  
of Exceptions**

It is hereby STIPULATED, and agreed, by and between the above named parties, that the above named defendant may have until June 10th, 1914, within which to serve and file its proposed Bill of Exceptions herein.

Dated at Spokane, Washington, this 7th day of May, 1914.

(Signed) FRANCIS A. GARRECHT,

Attorney for Plaintiff.

(Signed) HAMBLÉN & GILBERT,

Attorneys for Defendant.



Endorsements: Stipulation Extending Time for Preparing Proposed Bill of Exceptions.

Filed in the U. S. District Court for the Eastern District of Washington, May 7, 1914.

W. H. HARE, Clerk,  
By Frank C. Nash, Deputy.

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(COPY)

*In the District Court of the United States for the Eastern District of Washington, Northern Division.*

No. 1752.

THE UNITED STATES OF AMERICA,  
*Plaintiff,*

*vs.*

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a corporation,  
*Defendant.*

AT LAW.

### **Bill of Exceptions**

BE IT REMEMBERED, that on the 20th day of April, 1914, at Spokane, Washington, the above entitled action came regularly on for trial before the Honorable Frank H. Rudkin; plaintiff appearing by Francis A. Garrecht, United States Attorney, and Otis B. Kent, Special Assistant to the United States Attorney, and the defendant appearing by Hamblen & Gilbert, its attorneys; a jury having been waived, said cause was tried to the court, whereupon the following proceedings were had.

The plaintiff submitted a certain stipulation between the parties hereto, agreeing upon certain facts



herein, which stipulation is one file, and is as follows:

“IT IS HEREBY STIPULATED by and between the parties to the above numbered and entitled cause that the defendant, Oregon-Washington Railroad & Navigation Company, is, and was during all the time specified in the declaration, a common carrier by railroad incorporated, organized, existing and doing business under the laws of the State of Oregon; and that it is, and was during all of said time, engaged in interstate commerce;

That on March 27th, 1913, a certain telegraph operator and employee in the service of the said defendant, to-wit: B. G. Bishop, went on duty at Colfax, in the State of Washington, at 7:30 a. m., and remained on duty as such operator until 11:15 p. m., on said date;

That on May 23rd, 1913, the said B. G. Bishop went on duty as such operator at Colfax, in the said State of Washington, at 6:30 a. m., and remained on duty as such operator until 8:05 p. m. on said date:

That on both of said dates, between the hours specified, the said operator, B. G. Bishop, was engaged in part in the handling of orders pertaining to or affecting the movement of trains engaged in interstate commerce;

That on September 2, 1913, and not before said date, the said defendant reported to the Interstate Commerce Commission, at its offices in Washington, D. C., the two foregoing instances in which an operator and employee of the said defendant remained on duty as such operator for more than 13 hours

in a 24-hour period in a place or office operated only during the day-time;

That the declaration herein may be amended by interlineation with respect to counts Nos. 16 to 30, inclusive, so as to show the service of the said operator B. G. Bishop, as having occurred on May 23, 1913, instead of May 25, 1913, as stated in said declaration.

For Plaintiff: Francis A. Garrecht, U. S. Attorney.

By: Otis B. Kent, Special Assistant United States Attorney.

For Defendant: Hamblen & Gilbert, attorneys.

The plaintiff offered in evidence, certified copies of Hours of Service reports of the defendant company, reporting hours of excess service of certain employees of said defendant, occurring during the months of March and May, 1913, it being conceded by the defendant that said reports filed with the Interstate Commerce Commission by the defendant, herein, were identical forms of reports required to be used and filed by carriers under the order of the Interstate Commerce Commission on June 28th, 1911.

Defendant objected to the introduction of said certified copies of said reports in evidence, on the ground that same were incompetent, irrelevant, and immaterial. The Court overruled the objection, whereupon the defendant excepted, and said exception was allowed.

*TESTIMONY OF CHARLES H. BATES FOR DEFENDANT.*

The defendant thereupon introduced in evidence,

the deposition of Charles H. Bates, taken at Washington, D. C., on behalf of the defendant. Said deposition is as follows:

*“Examination by Mr. Harr:*

CHARLES H. BATES, of lawful age, being by me first duly sworn, as hereinafter certified, deposes as follows:

Q. 1. Mr. Bates, will you please state your residence and occupation?

A. Washington, D. C.; attorney at law.

Q. 2. What connection or employment, if any, have you with the Oregon-Washington Railroad & Navigation Company, defendant in this case?

A. I am the attorney in this city for said Company.

Q. 3. How long have you been so employed?

A. From the time of the organization of said Company, and I represented its predecessor companies back since about 1901.

Q. 4. In your capacity as attorney for defendant what duties do you perform in respect of the serving upon that Company by the Interstate Commerce Commission of its notices and processes?

A. On February 16, 1911, I filed with the Interstate Commerce Commission my designation as statutory agent for the Oregon-Washington Railroad & Navigation Company, upon whom service of all notices and processes might be made for and on behalf thereof, in accordance with Section 6 of the “Commerce Court Act,” approved June 18th, 1910. Said designation was dated January 30th, 1911, and was



duly executed for the Company by its President and Secretary, under the corporate seal. Since February 16, 1911, the Interstate Commerce Commission has served upon me for said defendant all notices and processes that have been served upon said Company by it.

Q. 5. What, if anything, do you know about a certain order of the Interstate Commerce Commission dated June 28th, 1911, entitled, "In the Matter of the Method and Form of Monthly Reports of Hours of Service of Employees on Railroads subject to the Act of March 4, 1907."?

(Here Mr. Kent noted an objection on the ground of incompetency, irrelevancy and immateriality.)

A. My record shows that on July 6th, 1911, a copy of said order was served upon me for Oregon-Washington Railroad & Navigation Company, and certain other carriers, and that the copy served upon me for said Company was mailed by me on the same date, namely, July 6, 1911, to Mr. J. P. O'Brien, Vice President and General Manager thereof, Portland, Oregon.

Q. 6. Have you a copy of the order as served upon you and can you attach it to your deposition?

(Objected to as incompetent, irrelevant and immaterial.)

A. I have; and attach same hereto marked "Bates-Exhibit I".

Q. 7. Are you certain that this copy you present and have identified by marking "Bates-Exhibit I" is in the exact words as the copy served upon you and to which you make reference above?

(Objected to as incompetent, irrelevant and immaterial.)

A. I can only say that the copy attached hereto has been received by me informally from the office of the Interstate Commerce Commission, as a copy of the order referred to, and personally I have no doubt that it is an exact copy as served upon me.

Q. 8. On the copy which was served upon you for defendant was there any interlineation or striking out of any of the words or parts thereof to show that there was a correction?

(Objected to as incompetent, irrelevant and immaterial.)

A. There was not.

Q. 9. You have submitted here only a one-page copy of this order, whereas the order itself refers to certain "accompanying forms, entitled, 'Interstate Commerce Commission Hours of Service Reports' ". Are you certain that no forms or other papers of any kind were attached to the order as served upon you?

(Objected to as incompetent, irrelevant and immaterial.)

A. I am certain that there were no forms or other papers of any kind attached to said order and served upon me.

Chas. H. Bates.

*Cross-examination by Mr. Kent.*

X-Q.1. Mr. Bates, did you ever receive from the Interstate Commerce Commission on behalf of the defendant herein, a copy of an order, dated April



8th, 1912, "In the Matter of Alteration in the Method and Form of Monthly Reports of Hours of Service of Employees on Railroads Subject to the Act of March 4, 1907"?

A. I did. My record shows such order was received by me on June 5, 1912.

X-Q. This order refers to certain "accompanying forms, entitled 'Interstate Commerce Commission Hours of Service Reports' and designated as "forms Nos. 1 to 8, inclusive. At the time of your receipt of the order in question from the Commission, did you also receive on behalf of said defendant, copies of the designated forms?

A. I did receive with the order of April 8, 1912, the forms therein mentioned.

Chas. H. Bates.

BATES' EXHIBIT I.

INTERSTATE COMMERCE COMMISSION.

---

ORDER.

At a General Session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 28th day of June, A. D. 1911.

Present:

Judson C. Clements,  
Charles A. Prouty,  
Franklin K. Lane,  
Edgar E. Clark,  
James S. Harlan,  
Charles C. McChord,  
Balthasar H. Meyer,  
Commissioners.

IN THE MATTER OF THE METHOD AND FORM OF MONTHLY REPORTS OF HOURS OF SERVICE OF EMPLOYEES ON RAILROADS SUBJECT TO THE ACT OF MARCH 4, 1907.

The method and form of monthly reports of hours of service of employees upon railroads subject to the Act of March 4, 1907, having been considered by the Commission:

IT IS ORDERED, that all carriers subject to the provisions of the act entitled "An Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, report within 30 days after the end of each month, under oath, all instances where employees subject to said act have been on duty for a longer period than that provided in said Act.

IT IS FURTHER ORDERED, that the accompanying forms entitled "Interstate Commerce Commission Hours of Service Report", and the method embodied in the instructions therein set forth, be, and the same are hereby, adopted and prescribed; and all common carriers subject to said act are hereby notified to use and follow the said prescribed forms and method in making monthly reports of hours of service of employees on duty for a longer period than that named in said act, commencing with and making the first report for the month of July, 1911.

AND IT IS FURTHER ORDERED, that copies of said forms, together with a copy of this

order, be forthwith served upon all common carriers subject to said act.

A true copy:

Judson C. Clements,

Chairman.

Thereupon said cause was submitted to the court, upon motion made by the plaintiff to enter judgment as prayed for in the complaint, and upon motion made by defendant to enter judgment in favor of the defendant, upon the ground and for the reason that upon the facts established by the evidence in the case no violation of law as alleged in plaintiff's complaint has been established, but to the contrary the plaintiff had failed to make out or establish its cause of action upon any count alleged.

Said cause was argued by counsel and submitted to the court, whereupon the court having taken the case under advisement denied said contention of the defendant and overruled its motion, to which ruling of the court defendant notes an exception, and its exception is now allowed by the court, and the court thereupon granted the motion of the plaintiff and entered judgment in favor of the plaintiff and assessed a fine of \$100.00 for each count set forth in the complaint herein, being a total penalty of \$3000.00, together with the costs and disbursements of the plaintiff, to which ruling the defendant noted an exception and its exception was allowed.

*In the District Court of the United States for the  
Eastern District of Washington, Northern Division.*

No. 1752.

THE UNITED STATES OF AMERICA,

*Plaintiff,*

*vs.*

OREGON-WASHINGTON RAILROAD & NAVI-  
GATION COMPANY, a corporation,

*Defendant.*

AT LAW.

**Stipulation Concerning Bill of Exceptions**

It is hereby stipulated and agreed, by and between the plaintiff and the defendant, in the above entitled cause, by their respective attorneys, that the bill of exceptions hereto attached embodies all of the exceptions proposed by either party herein to said cause, and that there are no amendments or proposed amendments thereto; that said bill of exceptions may be settled by the Judge of said court in the manner provided by the rules of said court without objection by either party hereto.

Dated this 29th day of June, A. D. 1914.

(Signed) FRANCIS A. GARRECHT,

U. S. Attorney,

OTIS B. KENT,

Special Assistant U. S. Attorney,

Attorneys for Plaintiff.

(Signed) HAMBLÉN & GILBERT,

Attorneys for Defendant.

Endorsements: Stipulation.

Filed June 29th, 1914.

W. H. HARE, Clerk,

By F. C. Nash, Deputy.



**Order Settling and Allowing Bill of Exceptions**

The foregoing Bill of Exceptions, duly and within the time allowed by law, proposed by defendant, is hereby upon stipulation of the parties hereto, duly settled and allowed as defendant's bill of exceptions, and it is certified that the same contains the entire record submitted to the court and that same contains all evidence introduced upon the case and upon which the judgment of the court was rendered.

Dated this 3rd day of August, A. D. 1914.

(Signed) FRANK H. RUDKIN,

United States District Judge who presided  
at the trial of said cause.

Endorsements: Bill of Exceptions.

Received at the Clerk's office May 27, 1914, and filed, after being settled and allowed by Court, in the U. S. District Court for the Eastern District of Washington, August 3, 1914.

W. H. HARE, Clerk,  
By Frank C. Nash, Deputy.

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*In the District Court of the United States for the  
Eastern District of Washington, Northern Division.*

No. 1752.

THE UNITED STATES OF AMERICA,

*Plaintiff,*

*vs.*

OREGON-WASHINGTON RAILROAD & NAVI-  
GATION COMPANY, a corporation,

*Defendant.*

## AT LAW.

**Stipulation**

It is stipulated and agreed by and between counsel for the respective parties to this cause, by and through their attorneys of record, that with respect to the printing of the record of this cause for the purpose of its being heard in the Circuit Court of Appeals, this court, if it shall be so advised, may make an order directing the clerk of this court to omit from the printed record certain portions of the record as filed; that is to say, that the 2nd to the 30th cause of action, inclusive of the Government's complaint in this cause, be omitted from the printed record, and that there be substituted in place thereof a description of the same as follows:

"Said complaint contained 29 additional causes of action of the same tenor and effect, and in precisely the same words and figures as the first cause of action; except that the dates wherein defendant was alleged to have continued in default with respect to said reports were alleged to be respectively from the 2nd day of May, 1913, to the 17th day of May, 1913, both dates inclusive and intervening Sundays excepted, and from the 1st day of July, 1913, to the 18th day of July, 1913, both dates inclusive, Fourth of July and intervening Sundays excepted.

Wherefore, plaintiff prays judgment against defendant in the sum of \$3000.00 and its costs herein expended."

Also, that the caption and first cause of action alleged in the Government's complaint shall be printed in full.

Also, that in printing the bill of exceptions and record in this case, those certain documents consisting of many sheets, being certified copies of hours of service reports of the defendant company offered in evidence by plaintiff and referred to in bill of exceptions at the bottom of page 2 and top of page 3 thereof, be omitted from the printed record, and that the following description thereof be considered as part of said bill of exceptions, and be taken and deemed a sufficient printed record thereof, to-wit:

“Report of excess service for month of March, 1913, made by Oregon-Washington Railroad & Navigation Company, received by the Commission April 21, 1913, in which the name of B. G. Bishop does not appear, consists of 1 sheet on form 1, being the oath of C. J. Sutherland, Assistant General Manager of the Oregon-Washington Railroad & Navigation Company, subscribed and sworn to by him on April 16, 1913, to which was attached 19 sheets of form 2, showing 70 employes of defendant on duty more than 16 consecutive hours for various reasons in each sheet set forth; 3 sheets on form 5, containing the names of 8 employes on duty more than 16 consecutive hours; 5 sheets on form 6, showing 10 employes of defendant company to have been on duty more than 9 hours in any 24-hour period; and 2 sheets on form 7, showing 2 operators on duty for a longer period than 13 hours in any 24-hour period, at offices operated only in the daytime, the latter sheet being designated ‘Supplemental Report,’ and received from defendant company by Interstate Commerce Commission on September 2, 1913, and cov-

ering the over-time of B. G. Bishop referred to in complaint of plaintiff.

“Report of excess service for month of May, 1913, made by Oregon-Washington Railroad & Navigation Company, received by the Commission June 26, 1913, in which the name of B. G. Bishop does not appear, consists of 1 sheet on form 1, subscribed and sworn to by C. J. Sutherland, Assistant General Manager of the Oregon-Washington Railroad & Navigation Company, to which was attached 7 sheets on form 2, showing 30 employes on duty more than 16 consecutive hours for various reasons in each sheet set forth; 5 sheets on form 6, showing 7 employes on duty more than 9 hours in any 24-hour period for various reasons in each sheet set forth; 2 sheets on form 7, showing 2 employes on duty more than 13 hours in any 24-hour period for the reasons in each sheet set forth, the latter sheet of which is designated ‘Supplemental Report,’ and was received from defendant company by Interstate Commerce Commission on September 2, 1913, and covers the hours of service of B. G. Bishop, the party referred to in plaintiff’s complaint.”

It is further stipulated and agreed that in the event that either party shall desire said original Government’s exhibit, being the certified copies of report of excess service for the months of March and May, A. D. 1913, they may apply to the presiding judge of the District Court, the opposite party consenting, for a rule or order for the safe-keeping and transporting of said original documents to the Circuit Court of Appeals and return therefrom, under Sec-



tion 4 of Rule 14 of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at Spokane, Washington, this 21st day of August, A. D. 1914.

(Signed) A. C. SPENCER and  
HAMBLÉN & GILBERT,  
Attorneys for Plaintiff in Error.

(Signed) FRANK A. GARRECHT,  
Attorney for Defendant in Error.

Endorsements: Stipulation.

Filed in the U. S. District Court for the Eastern District of Washington, August 21, 1914.

W. H. HARE, Clerk,  
By Frank C. Nash, Deputy.

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*In the District Court of the United States for the  
Eastern District of Washington, Northern Division.*

No. 1752.

OREGON-WASHINGTON RAILROAD & NAVI-  
GATION COMPANY, a corporation,  
*Plaintiff in error,*

*vs.*

UNITED STATES OF AMERICA,  
*Defendant in error.*

AT LAW.

### **Petition for Writ of Error**

And comes now the plaintiff in error, Oregon-Washington Railroad & Navigation Company, a corporation, (defendant in the action), and says, that on or about the 27th day of May, A. D. 1914, the above entitled District Court entered a judgment

herein in favor of the plaintiff, United States of America, and against the defendant, Oregon-Washington Railroad & Navigation Company, in which judgment and the proceedings had prior thereto in this cause, certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the Assignment of Error which is attached to and filed with this petition.

WHEREFORE, this defendant prays that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California.

(Signed) A. C. SPENCER,

(Signed) HAMBLÉN & GILBERT,

Attorneys for Plaintiff in Error

Oregon-Washington Railroad & Nav. Co.

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*In the District Court of the United States for the  
Eastern District of Washington, Northern Division.*

No. 1752.

OREGON-WASHINGTON RAILROAD & NAVI-  
GATION COMPANY, a corporation,

*Plaintiff in Error.*

*vs.*

UNITED STATES OF AMERICA,

*Defendant in Error.*

AT LAW.

**Assignment of Errors**

Plaintiff in error, the Oregon-Washington Railroad & Navigation Company, hereby assigns the following errors committed by the Trial Court:

1. The trial court erred in overruling the defendant's objection to the introduction of the certified copies of the reports filed by the defendant with the Interstate Commerce Commission. These reports were the printed forms of reports required to be used and filed by carriers under the order of the Interstate Commerce Commission of June 28, 1911, and contained the report of the defendant of hours of excess service of certain of its employees, occurring during the months of March and May, 1914.

2. The trial court erred in denying defendant's motion to enter judgment in its favor, which motion was made at the close of all the testimony, and was based upon the ground that upon the facts established by the evidence in the case, no violation of law as alleged in plaintiff's complaint had been established, and upon the further ground that the plaintiff had failed to make out or establish its cause of action upon any count alleged.

3. The trial court erred in entering judgment in favor of the plaintiff and against the defendant.

WHEREFORE, plaintiff in error prays that said judgment of the District Court be reversed and the said District Court ordered to enter judgment dismissing the action.

(Signed) A. C. SPENCER,

(Signed) HAMBLIN & GILBERT,

Attorneys for Plaintiff in Error.

On consideration of the foregoing petition and assignments of error attached thereto, the court does allow the Writ of Error to Defendant, Oregon-Washington Railroad & Navigation Company, upon giving bond according to law in the sum of Four Thousand Dollars (\$4000.00), which shall operate as a supersedeas bond.

Dated this 4th day of August, 1914.

(Signed) FRANK H. RUDKIN,  
United States District Judge for the Eastern District of Washington, Northern Division, who tried said cause and entered said judgment.

Endorsements: Petition for Writ of Error, Order Allowing Writ of Error and Assignment of Errors.

Filed in the U. S. District Court for the Eastern District of Washington, August 4, 1914.

W. H. HARE, Clerk,  
By Frank C. Nash, Deputy.

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*In the District Court of the United States for the Eastern District of Washington, Northern Division.*

No. 1752.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a corporation,

*Plaintiff in error,*

*vs.*

UNITED STATES OF AMERICA,

*Defendant in Error.*



AT LAW.

**Writ of Error**

(Lodged Copy.)

THE UNITED STATES OF AMERICA,

Ninth Judicial Circuit,—ss.

The President of the United States, to the Honorable  
Judge of the District Court of the United States,  
for the Eastern District of Washington, Northern  
Division, Greeting:

Because in the record and proceedings, as also  
in the rendition of the judgment, of a plea which  
is in the said District Court before you, between the  
United States of America, plaintiff, and the Oregon-  
Washington Railroad & Navigation Company, a cor-  
poration, defendant, a manifest error hath happened,  
to the great damage of the said defendant, the Oregon-  
Washington Railroad & Navigation Company, a cor-  
poration, as by its complaint appears, we being willing  
that error, if any hath been, should be duly corrected,  
and full and speedy justice done to the parties afore-  
said in this behalf do command you, if judgment be  
therein given that then under your seal, distinctly  
and openly, you send the record and proceedings afore-  
said, with all things concerning the same, to the  
United States Circuit Court of Appeals, for the Ninth  
Circuit, together with this writ, so that you have the  
same at San Francisco on the First day of Septem-  
ber, 1914, in the said Circuit Court of Appeals for  
the Ninth Circuit, to be then and there held, that the  
record and proceedings being inspected, the said Cir-  
cuit Court of Appeals may cause further to be done

therein to correct that error what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 4th day of August, in the year of our Lord, one thousand nine hundred and fourteen.

(Signed) W. H. HARE,  
Clerk U. S. District Court, for the Eastern District  
of Washington, Northern Division.

By Frank C. Nash, Deputy.

(SEAL)

ALLOWED BY:

FRANK H. RUDKIN,  
Judge.

Endorsements: Service Accepted this 4th day of  
August, 1914.

(Signed) F. A. GARRECHT,  
U. S. Attorney.

Writ of Error (Lodged Copy.)

Filed in the U. S. District Court for the Eastern  
District of Washington, August 4, 1914.

W. H. HARE, Clerk.  
By Frank C. Nash, Deputy.

*In the United States District Court, for the Eastern  
District of Washington, Northern Division.*

No. 1752.

OREGON-WASHINGTON RAILROAD & NAVI-  
GATION COMPANY, a corporation,

*Plaintiff in error,*

*vs.*

UNITED STATES OF AMERICA,

*Defendant in error.*

AT LAW.

**Supersedeas and Cost Bond on Writ of Error**

KNOW ALL MEN BY THESE PRESENTS,  
that we, Oregon-Washington Railroad & Navigation  
Company, (a corporation) as principal, and National  
Surety Company, (a corporation organized under the  
laws of the State of New York for the purpose of  
doing business as a Surety, and which has complied  
with the statutes of the United States authorizing  
it to become a surety of bonds in the Courts of the  
United States), as surety, are held and firmly bound  
unto the United States of America, in the just and  
full sum of four thousand and no-100 dollars  
(\$4000.00), to be paid unto the said above named  
United States of America, its attorneys, officers or  
assigns, to which payment, well and truly to be  
made, we bind ourselves, our successors and our as-  
signs jointly and severally firmly by these presents.

Sealed with our seals and dated this 3d day of  
August, A. D. 1914.

Upon the conditions that:

WHEREAS, lately at a session of the United

States District Court for the Eastern District of Washington, Northern Division, in a suit pending in said court between the United States of America, and the Oregon-Washington Railroad & Navigation Company, a corporation, a judgment was rendered against said defendant in the sum of Three thousand dollars (\$3000.00), and costs amounting to-----dollars, (\$----); and,

WHEREAS, said defendant conceiving itself aggrieved thereby, has obtained from said Court a writ of error to reverse and correct said judgment in that behalf and a citation directed to the above named defendant in error admonishing said defendant in error to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, in the State of California within the time therein fixed; and,

WHEREAS, an order has been entered requiring said defendant to file supersedeas bond and cost bond in the aggregate sum of four thousand dollars (\$4000.00);

NOW, the condition of the above obligation is such that if the said Oregon-Washington Railroad & Navigation Company, a corporation, shall prosecute its said writ of error to effect, and answer all damages and costs if it fails to make its plea good in said Court, then the above obligation to be void; otherwise to remain in full force and virtue.

This bond is intended as a bond for costs on appeal and as a supersedeas Bond.



(Signed) OREGON-WASHINGTON RAILROAD &  
NAVIGATION CO.,

By: HAMBLÉN & GILBERT,

Its Agents and Attorneys.

NATIONAL SURETY CO. OF N. Y.,

By JAMES BROWN, Res. Vice Pres.,

Attest: F. L. JONES, Res. Asst. Secty.

The foregoing bond is hereby approved this 4th day of August, 1914, and the same when filed shall operate as a bond for costs on appeal and as a Supersedeas Bond.

(Signed) FRANK H. RUDKIN,

Judge.

Endorsements: Supersedeas Bond and Cost Bond on Writ of Error.

Filed in the U. S. District Court for the Eastern District of Washington, August 4, 1914.

W. H. HARE, Clerk,

By Frank C. Nash, Deputy.

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*In the District Court of the United States for the Eastern District of Washington, Northern Division.*

No. 1752.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, a corporation,

*Plaintiff in Error,*

*vs.*

UNITED STATES OF AMERICA,

*Defendant in Error.*

AT LAW.

**Citation on Writ of Error**

(Lodged Copy.)

UNITED STATES OF AMERICA,

EASTERN DISTRICT OF WASHINGTON,—ss.

TO THE UNITED STATES OF AMERICA, and  
to Francis A. Garrecht, its Attorney, Greetings:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States, Eastern District of Washington, Northern Division, wherein the Oregon-Washington Railroad & Navigation Company, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at Spokane in said District, this 4th day of August, 1914.

(Signed) FRANK H. RUDKIN,

Judge.

(SEAL)

Endorsements: Service of within Citation accepted this 4th day of August, 1914.

(Signed F. A. GARRECHT,

U. S. Attorney.

Citation. (Lodged Copy.)

Filed in the U. S. District Court for the Eastern District of Washington, August 4, 1914.

W. H. HARE, Clerk,  
By Frank C. Nash, Deputy.

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*In the District Court of the United States, Eastern  
District of Washington, Northern Division.*

No. 1752.

UNITED STATES OF AMERICA,

*Plaintiff,*

OREGON-WASHINGTON RAILROAD & NAVI-  
GATION COMPANY, a corporation,

*Defendant.*

### **Pracipe for Transcript**

To the Clerk of the above-entitled court:

You will please prepare transcript of the complete record in the above-entitled case to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, under the writ of error to be perfected to said court, and include in said transcript the following proceedings, pleadings, papers, records and files, to-wit:

1. Complaint.
2. Answer.
3. Stipulation of Agreed Statement of Facts.
4. Stipulation Waiving Trial by Jury.
5. Opinion.
6. Judgment.
7. Bill of Exceptions and Certificate.
8. Assignment of Errors.

9. Petition for Writ of Error.
10. Order Allowing Writ of Error and fixing Bond.
11. Supersedeas Bond and Bond for Costs.
12. Citation.
13. Writ of Error.
14. Praecipe for Transcript of Record.
16. Stipulation Extending time to file Bill of Exceptions.
17. Stipulation as to Printing record.

—and any and all records, entries, pleadings, proceedings, papers, filings necessary or proper to make a complete record upon said writ of error in said cause. Said transcript to be prepared as required by law and the rules of this court and the rules of the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

(Signed) ARTHUR C. SPENCER and  
HAMBLIN & GILBERT,

Attorneys for Defendant.

Endorsements: Praecipe for Transcript of Record.

Filed in the U. S. District Court for the Eastern District of Washington, August 11, 1914.

W. H. HARE, Clerk,  
By Frank C. Nash, Deputy.



*In the District Court of the United States, Eastern  
District of Washington, Northern Division.*

No.----- --

THE UNITED STATES OF AMERICA,

*Plaintiff,*

*vs.*

OREGON-WASHINGTON RAILROAD & NAVI-  
GATION COMPANY, a Corporation,

*Defendant.*

**Certificate of Clerk U. S. District Court to  
Transcript of Record**

UNITED STATES OF AMERICA,

Eastern District of Washington,—ss.

I, W. H. HARE, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify that the foregoing printed pages, numbered from 1 to 43, inclusive, constitute, and are a true and correct copy of the record, pleadings, testimony and all proceedings had in said action as called for by the defendant and the plaintiff in error in its praecipe for a transcript of the record herein, as the same remain on file and of record in said District Court, and that the same which I transmit constitute my return to the annexed Writ of Error lodged and filed in my office on the 4th day of August, 1914. I also annex and transmit the original citation in said action.

I further certify that the cost of preparing, certifying and printing the foregoing transcript and record amounts to the sum of \$75.65, which sum has been paid in full by Hamblen & Gilbert, attorneys for defendant and plaintiff in error.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court at the city of Spokane, in the Eastern District of Washington, Northern Division, in the Ninth Judicial Circuit, this 26th day of August, 1914, and in the Independence of the United States of America, the one hundred and thirty-ninth.

(Signed) W. H. HARE,  
Clerk, U. S. District Court for the  
Eastern District of Washington.

(SEAL)



